

HAWAII ADMINISTRATIVE RULES

TITLE 12 DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

PART 11

CHAPTER 241

GENERAL, ADMINISTRATIVE, AND LEGAL PROVISIONS

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Historical Note: Chapter 241 of title 12 is based on chapter 210. [Eff 12/6/82; am 12/19/83; am 12/8/86; am and comp 12/6/90; am 11/5/93; am 9/21/96; R 7/6/98] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-241-1 Definitions. As used in part 11:

"Alteration" means a change in any item described on the original Manufacturer's Data Report or specification other than maintenance, repair, or replacement; additional mechanical tests are required.

"Amusement ride" means a mechanically or electrically operated device designed to carry passengers in various modes and used for entertainment and amusement.

"ANSI" means the American National Standards Institute.

"ANSI A12.1" means ANSI A12.1-1973, Safety Requirements for Floor and Wall Openings, Railings, and Toeboards.

"ANSI B29.1" means ANSI B29.1-1975, Precision Power Transmission Roller Chains, Attachments, and Sprockets.

"ASME A17.2" means ASME A17.2.1 1996, Inspectors Manual for Elevators and Escalators.

"Appeals board" means the labor and industrial relations appeals board, department of labor and industrial relations.

"Approved" means approved by the department.

"Appurtenance" means a device installed on and used in the normal operation of an elevator, escalator and kindred equipment.

"ASME A17.1" means ASME A17.1-1996, Safety Code for Elevators and Escalators.

"ASME" means American Society of Mechanical Engineer.

"Attorney general" means the attorney general of the State of Hawaii or any of the attorney general's deputies.

"Authorized inspection agency" means:

The department of labor and industrial relations, boiler and elevator inspection branch.

"Certificate of competency" means a certificate issued to a person who has passed the examination prescribed by the director.

"Contractor" means any person, firm, or corporation installing, repairing, or servicing and responsible for the safe operation of any amusement ride, and elevator and kindred equipment or structure inspected pursuant to chapter 397, HRS.

"Department" or "DLIR" means the department of labor and industrial relations, State of Hawaii.

"Diameter" means tread diameter when used in specifying sheaves, wheels, or pulleys.

"Director" means the director of the department of labor and industrial relations or the director's designee.

"Discrepancy" means the non-conformance of an item, unit, or part to codes, standards, rules, or regulations required by part 11 of this subtitle which the owner, user, or contractor could not have had knowledge.

"Division" or "HIOSH" means the Hawaii Occupational Safety & Health, department of labor and industrial relations, State of Hawaii.

"Elevator" means a hoisting and lowering mechanism permanently installed in a structure, designed to carry passengers or authorized personnel, equipped with a car or platform which moves in fixed guides and serves two or more fixed landings.

"Elevators and kindred equipment" means elevators, escalators, dumbwaiters, moving walks, manlifts, inclined passenger lifts, personnel hoists, aerial tramways, personal automatic trains, and any other similar mechanized equipment used to convey people in places other than a public right-of-way.

"Factor of safety" is the number by which a given permissible force, or load, value can be multiplied before the structure machine or device reaches its ultimate design strength value.

"Hawaii Revised Statutes" or "HRS" means laws enacted by the Hawaii State Legislature.

"Inclined passenger lift" means a device constructed and operated for transporting persons from one elevation to another consisting essentially of a level car or platform traveling on guide rails in an inclined plane. Devices installed indoors on stairways and utilizing chairs for carrying passengers are not considered to be inclined passenger lifts.

"Inspector" means the chief inspector, inspector, special inspector, or owner-user inspector holding a valid certificate of competency issued by the department:

- (1) "Chief inspector" means the appointed chief elevator inspector;
- (2) "Inspector" means any elevator inspector appointed by the director and employed by the department;

"May" means permissive.

"NFPA" means the National Fire Protection Association.

"NFPA 70" means NFPA 70 1996, National Electrical Code.

"Operating permit" means a permit issued by the department authorizing the operation of an elevator and kindred equipment.

"Order" means a command to perform a mandatory act issued by the department.

"Owner" means any person, firm, or corporation with legal title to any amusement ride, and elevator and kindred equipment inspected pursuant to chapter 397, HRS, who may or may not be the user.

"Safety" means a mechanical device attached to the car frame or to the counterweight, when provided, to stop and hold the car or counterweight in case of predetermined overspeed or free fall, or if the suspension ropes slacken.

"Shall" means mandatory.

"Uniform Building Code" means the Uniform Building Code, 1994.

"User" means any person, firm, or corporation legally in possession and responsible for the safe operation of any amusement ride, and elevator and kindred equipment inspected pursuant to chapter 397, HRS.

"Vendor" means any person, firm, or corporation that sells or distributes any amusement ride, and elevator and kindred equipment required to be inspected pursuant to chapter 397, HRS.

"Vertical wheelchair lift" means a power passenger lift used to vertically raise and lower a person in a wheelchair or a person of limited mobility in or on a car or platform from one level to another.

"Violation" means non-conformance of an item, unit, or part to codes, standards, rules, or regulations required by this subtitle.

"Welding documentation" means welding procedure specifications, procedure qualification records, records of performance qualification, and reports of welded repairs or alterations. [Eff 7/6/98] (Auth: HRS §397-4) (Imp: HRS §397-3)

§12-241-2 Complaints. (a) Complaints may be made to the department and where reasonable grounds exist for the department to believe there may be a hazard, there shall be an inspection in response to the complaint.

- (b) Names of all complainants and witnesses shall be held in confidence by the department, unless prior permission has been given by the complainant or witness to release his or her name, or unless it has been determined by the attorney general that disclosure is necessary for enforcement and review of this chapter. [Eff 7/6/98] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-241-3 Permits. (a) An installation permit shall be issued by the department based on the approval of drawings and specifications pertaining to the installation or alteration of elevators and kindred equipment; operating permits shall be issued by the department on the basis of the report of the

acceptance inspection and each permit inspection.

(b) No person shall install, construct, reconstruct, relocate, or make an alteration to any elevator and kindred equipment without first obtaining an installation permit from the department.

- (1) The plans and specifications for installation or alteration of elevators and kindred equipment together with such buildings details as are pertinent to the installation shall be submitted to the department before any work is begun on the installation. Final shop drawings shall be submitted to the department. Plans shall be resubmitted for any project on which the installation has not commenced within three years of the plan approval date. Copies of engineering data, tests, and laboratory reports, and any other pertinent information deemed necessary by the department shall be submitted by the installer on any new equipment or appurtenance to be installed for the first time in the State of Hawaii.
- (2) An installation permit as required under subsection (a) above shall be issued only to a person who is licensed to engage in the business of installing or repairing elevators and kindred equipment by the contractors license board of the department of commerce and consumer affairs, State of Hawaii.
 - (A) All major repairs performed on boilers, pressure vessels, pressure systems, and boiler external piping shall be reported to the department.
 - (B) All major alterations to elevators and kindred equipment as described in ASME A17.1 Part 12 shall require an installation permit as described in section 12-241-3(a). Any change from the car's original interior design shall be considered a major alteration necessitating the need for an installation permit as required by section 12-241-3(a).
 - (C) The owner, user, contractor, or designer shall be responsible for furnishing to the department all documentation required and referenced in the standards and codes adopted by the department for construction, repair, or alteration of any boiler, pressure vessel, pressure system, elevator and kindred equipment, or amusement ride.
- (3) The department shall, before issuance of a permit for installing, constructing, reconstructing, or relocating as required under subsection (a) above, charge and collect a fee for each permit in accordance with the schedule in tables 241-1 and 241-2, in section 12-241-19.

(c) The department shall issue a "permit to operate" for any elevator and kindred equipment required by the department to be inspected when they are found to be safe and in compliance with this subtitle by a qualified inspector. It shall be unlawful for any person, firm, association, partnership, or corporation to operate an elevator and kindred equipment regulated by this chapter unless a permit for the operation has been authorized by the department and the permit remains in effect.

- (1) A permit to operate an elevator and kindred equipment shall be issued to the owner or lessee only after an inspector has found that the device has met all requirements of this chapter.
- (2) A permit to operate elevators and kindred equipment shall be valid

for one year; or until the expiration date unless revoked sooner, and may be renewed only upon completion of an inspection by an inspector. A valid permit may be extended for cause by the department if so requested in writing by the owner or lessee.

- (3) The permit to operate shall indicate the type of equipment for which it is issued. In the case of elevators, the permit shall state whether it is passenger or freight, and the rated load and speed for the elevator, dumbwaiter, escalator, or moving walk.

The permit to operate shall be posted conspicuously in the car of the elevator and on or near the dumbwaiter, escalator, or moving walk. Exception: Elevator operating permits may be posted in a secure manner under a transparent cover or in a suitable case or cabinet and in such a way that they are reasonably easy to read, in a location approved by the department provided that, in each elevator car there is a permanent sign, conspicuously displayed, in letters not less than 1/4-inch high, that identifies the elevator by the owner's designator (number, letter, or name) and states where the operating permits may be seen. The permits for all elevators serving a common main lobby (i.e., those responding to a common main floor call button) may be grouped in a common display providing the permits are arranged in a logical order and are identified by their corresponding car designator.

- (4) The department may immediately revoke any "permit to operate" for any equipment, required to be inspected by this chapter, found to be in an unsafe condition or when a user, owner, or contractor ignores department orders to correct specific defects or hazards and continues to use or operate the above mentioned apparatus without abating the hazards or defects.
- (5) The department shall re-issue a "permit to operate" to any user, owner, or contractor who demonstrates good faith in proceeding to abate all nonconforming conditions specified in department orders provided the elevators and kindred equipment are safe to operate.
- (6) The department shall establish criteria for the periodic reinspection and renewal of the permits to operate, and may provide for the issuance of temporary permits to operate while any noncomplying elevator and kindred equipment are being brought into full compliance with chapter 397, HRS.
- (7) No amusement ride, or elevator and kindred equipment which is required to be inspected by chapter 397, HRS, or by any rule adopted pursuant to chapter 91, HRS, shall be operated except as necessary to install, repair, or test unless a permit to operate or certificate of inspection has been authorized or issued by the department and remains valid.
- (8) The department may, upon the application of any owner or user or any other person affected thereby, grant a reasonable period of time as may be necessary for compliance with any order. Any person affected by an order may for cause petition the department for an extension of time.
- (d) Certificates of inspection shall be issued for amusement rides after each inspection if the rides are found to be safe for use. [Eff 7/6/98]
(Auth: HRS §397-4) (Imp: HRS §397-4)

§12-241-4 Inspections and tests. (a) The department shall inspect to insure compliance with chapter 397, HRS, any activity related to the erection, construction, alteration, demolition, or maintenance of buildings, structures, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, underground pipelines or ducts, and other construction projects or facilities containing elevators and kindred equipment. All equipment required by this section to be inspected is exempt from the requirements of this chapter, if under the jurisdiction of the United States government or if

serving only a private residence and not accessible to the general public except where the location could affect persons other than the owner or owners.

- (b) Elevators, dumbwaiters, escalators, and moving walks.
 - (1) All safety inspections and witnessing of tests of elevators, dumbwaiters, escalators, and moving walks, as required under this chapter, shall be made in conformance with the procedures set forth in ASME A17.1 and ASME A17.2 and shall be performed by inspectors employed by the department.
 - (2) Where notations of discrepancies, recommendations, or requirements are made, these notations shall refer to the applicable rule or standard of ASME A17.1, ASME A17.2, or of this chapter.
 - (3) The owner or lessee of any elevator, dumbwaiter, escalator, or moving walk operated within the state, except those exempted by section 12-230-5, shall have it inspected in accordance with the following schedules:

 - (A) Elevators, dumbwaiters, manlifts, personnel hoists, aerial tramways, personal automatic trains and kindred equipment shall be inspected once in each twelve month period. The period between the first inspection, or the inspection used as a basis for the issuance of a permit to operate, and the subsequent inspection each year shall not exceed thirteen months nor be less than eleven months;
 - (B) Escalators, moving walks, speed ramps, inclined passenger lifts, and deep well elevators shall be inspected twice in each twelve month period. The period between the first inspection or the inspection used as a basis for the issuance of a permit to operate and the second or interim inspection each year shall not exceed seven months nor be less than five months;
 - (C) For electric elevators, a full-load, full-speed performance test shall be made of safeties, governors, and oil buffers at intervals not greater than sixty months; and
 - (D) For hydraulic elevators, the over-pressure protection device shall be tested for proper operation and the pressure containing parts for soundness when subjected to a load of 1-1/4 times the design capacity at intervals not exceeding thirty six months unless more frequent tests are specified by the department. The load test may be waived or the interval extended at the discretion of the department for those hydraulic elevator installations such as holeless hydraulic elevators in which all components are readily accessible for visual inspection.
- The period between inspections may be extended by the department for cause. A written application by the owner-user must be received by the department prior to the expiration date.
- (4) Any elevator, dumbwaiter, escalator, or moving walk not inspected in accordance with paragraph (3) above shall be taken out of service by the department.
 - (5) While conducting tests and inspections required by section 12-230-8(b) for acceptance of new elevators or by paragraph (3)(C) and (D) above for load testing of elevators, a positive means of communication, such as a walkie-talkie system, between the various

testing and witnessing personnel shall be furnished by the elevator maintenance company performing the test or inspection.

(c) Inclined passenger lift.

- (1) On completion of every new or altered inclined passenger lift installation, tests shall be made with contract load in the car under supervision of the department before the equipment is placed in regular service. These tests shall be repeated at intervals not exceeding sixty months.
- (2) In the test required above, brakes, limit switches, buffers, car safeties, speed governors and all other safety devices shall be caused to function.
- (3) Prior to placing any new or altered inclined lift into regular service a thorough examination of the entire installation shall be made by the department to ensure conformity with these rules.
- (4) Failure of any safety device to function properly under test or noncompliance with any part of chapter 12-234 shall be cause to withhold clearance for operation until satisfactory repairs or alterations are made.
- (5) When an inspector discovers an unsafe condition in connection with an inclined passenger lift that is not specifically addressed in chapter 12-234, the inspector shall issue an order requiring the owner to make all changes, improvements, or repairs as may be necessary to remove hazards to persons or reduce the possibility of accidents.
- (6) Each inclined passenger lift shall be inspected twice each year by the department.

(d) Amusement devices.

- (1) The department shall inspect and witness load tests, in accordance with section 12-250-7 at least semi-annually, for all mechanically- or electrically-operated devices considered as major rides and used as amusement rides at a carnival, circus, fair, or amusement park for the purpose of protecting the safety of the general public. Safety standards for amusement rides are prescribed in chapter 12-250. This section shall not apply to any coin-operated, mechanically-, or electrically-operated devices considered or known in the amusement trade as kiddie rides.
- (2) After the initial inspection, each amusement ride shall be inspected as often as necessary to ensure safe operation but not less than twice annually at intervals of not less than five months nor greater than seven months.
- (3) Certificate of inspection. If the department finds, upon inspection, that an amusement ride is in a safe operating condition and meets with the requirements of this chapter and chapter 12-250, the department shall affix to the ride in a prominent location a certificate of inspection bearing upon its face the date of the inspection.
- (4) No ride shall be operated unless it has affixed to it a certificate of inspection bearing a date less than seven months past. [Eff 7/6/98] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-241-5 Investigations. The department shall investigate, in accordance with section 12-241-14 accidents involving amusement rides, and

elevators and kindred equipment inspected under this chapter and may issue orders and recommendations with respect to the elimination and control of the cause factors. [Eff 7/6/98] (Auth: HRS §397-4) (Imp: HRS §§397-4, 397-6)

§12-241-6 Inspectors. (a) Elevator inspectors.

- (1) Required inspections of elevators and kindred equipment and of amusement rides shall be performed by elevator inspectors in the employ of the department who are qualified elevator inspectors.
 - (2) A qualified elevator inspector is an employee who is in possession of a valid elevator inspector certificate of competency issued by the department and shall be ASME certified. To qualify for a certificate of competency an employee shall have:
 - (A) Education. A bachelor's degree in mechanical or electrical engineering from an accredited college or university is preferred. Substitution of education or experience for education may be accepted as follows:
 - (i) Three years of advance or special education in the mechanical or electrical engineering field and a minimum of two years of work experience in a mechanical or electronics trade as a journeyman;
 - (ii) Eight years of work experience as a journeyman elevator mechanic;
 - (iii) Applicant shall have knowledge in ASME A17.1 Code, ASME A17.2 Inspectors Manual and Hawaii Elevator Safety Standards;
 - (iv) Satisfactorily passed a written examination given by the department testing knowledge of the State rules relating to elevators, dumbwaiters, escalators, moving walks, and manlifts.
 - (B) Experience. One year of experience in designing, constructing and servicing, or inspecting elevators and/or related equipment.
 - (C) Physical requirements. Mental and physical soundness, the ability to read, write, and understand the English language, and good moral character.
 - (D) Working conditions:
 - (i) Be able to work at heights and near moving mechanical parts, expose to noise, dust, heat, electrical hazards, and non-ionizing radiation;
 - (ii) Occasionally may be exposed to outside weather conditions such as rain and high winds, toxic or caustic chemicals, potentially hazardous gases, and fumes or airborne particles.
 - (3) All certificates of competency, unless suspended, revoked, or canceled, shall expire on termination of employment with the department.
- (b)** Commissions to inspect shall be carried at all times by inspectors while engaged in the performance of inspectional duties. Commissions are non-transferable.
- (c)** The certificate of competency and commissions issued to an inspector may be suspended by the director for cause and may be revoked after due investigation and recommendation by the department upon ten days notice to

the inspector and to the inspector's employer. Cause for suspension or revocation shall be incompetency or untrustworthiness, wilful falsification of any matter or statement contained in the inspector's application or in the report of any inspections, or other sufficient reason. Prior to revocation, the holder of the certificate of competency or commission shall be entitled to a hearing before the director. A person whose commission or certificate of competency has been suspended or revoked, except for untrustworthiness, shall be entitled to apply to the department for reinstatement or, in the case of revocation, for a new examination and commission ninety days after the revocation.

(d) No person shall be authorized to act for the State either as an inspector or a special inspector who is directly interested in the manufacture, sale, or repair of any equipment or any appurtenance used on any equipment which is inspected pursuant to chapter 397, HRS. [Eff 7/6/98] (Auth: HRS §397-4) (Imp: HRS §§397-4, 397-6)

§12-241-7 Fees. (a) Departmental inspections fees.

- (1) The department shall charge and collect from the owner, user, lessee, contractor, or insurance company referred to in this chapter as the beneficiary, the fee listed in table 241-2, in section 12-241-19 for each inspection made by an inspector during regular working hours. The department shall charge and collect a permit processing fee as listed in table 241-2 in section 12-241-19 for each object inspected and \$5 for each duplicate permit to operate requested.
- (2) When it is necessary to make a special trip to witness a test, an additional fee based upon the scale of fees for a permit inspection for the object under test shall be charged.
- (3) For all other inspections and services, the fee shall be \$75 per hour but not less than \$150 per occurrence during regular working hours and \$150 per hour but not less than \$200 per occurrence when performed outside regular working hours at the request of the beneficiary.
- (4) Scheduled inspections delayed or canceled by the beneficiary, too late to prevent the arrival of the inspector on the premises shall be charged for in accordance with the scheduled fee for the type inspection; however, if the notice of cancellation or delay of a scheduled inspection is given in time to prevent the incurring of travel expenses, no fee will be charged.
- (5) The charge for a rescheduled inspection or a call back inspection to allow an elevator and kindred equipment to operate may be at the scheduled fee for the type of inspection or for the expenses actually incurred, whichever is greater.
- (6) When an unscheduled inspection is made at the request of and for the benefit of an owner, user, contractor, or vendor, the sum of expenses incurred shall be charged in addition to the inspection fee.
- (7) Whenever the beneficiary of an inspection fails to pay the fees required under this section within sixty days after notification, the beneficiary shall pay, in addition to the fees required, a penalty equal to fifty per cent of the fee. For the purpose of this section, the date of invoice shall be considered the date of

notification.

- (8) Departmental reports of inspections for which expenses must be added to the basic fee shall be accompanied by an itemized account of the inspections made and the expenses incurred.
- (9) For those elevators, such as observation or deep well elevators, which have considerable rise but few openings, each ten feet of vertical rise shall be considered one floor in determining installation permit fees.
- (10) The department shall charge and collect the fee listed in table 241-2 in section 12-241-19 for each five or three year test of safety devices, governors, relief valves, pressure containing parts, and other safety equipment, witnessed by personnel of the department during regular working hours.
- (b)** Departmental installation permit and test fees.
 - (1) The department shall, before issuance of a permit for installing, constructing, re-constructing, or relocating, charge and collect a fee for each object in accordance with table 241-1 in section 12-241-19.
 - (2) The department shall, before issuance of a permit for a major alteration, charge and collect a fee for each object in accordance with table 241-1 in section 12-241-19.
 - (3) For each instance requiring an installation permit fee, the department shall provide:
 - (A) The plan review, inspection and witnessing of the acceptance test on the installation and one additional followup inspection; the followup inspection shall be at the convenience of the department. Any additional inspections required for final acceptance will be at the expense of the beneficiary of the inspection and may be at the convenience of the beneficiary provided all the expenses incurred are

- paid by the beneficiary and forty-eight hours advance notice is given to the department;
- (B) The processing and issuance of the temporary permit to operate; and
 - (C) The processing and issuance of the final permit.
- (5) Fees in accordance with table 241-1 in section 12-241-19 or the fee in effect on the application submittal date shall be charged and collected for all installation permits issued.
 - (6) For more than one additional inspection for final acceptance, the department may charge and collect from the beneficiary an additional amount in accordance with subsection (a)(3) above.
 - (7) For those elevators, such as observation or deep well elevators, which have considerable rise but few openings, each ten feet of vertical rise shall be considered one floor in determining installation permit fees.
 - (8) The department shall charge and collect the sum of \$150 for each test of safety devices, governors, relief valves, pressure containing parts, and other safety equipment, witnessed by personnel of the department during regular working hours.
 - (9) For plan and specification reviews and all other services, except for new installation and modernization reviews, the fee shall be \$75 per hour but not less than \$150 per occurrence during regular working hours. For all services rendered outside of regular working hours which have been requested by the beneficiary, the fee shall be \$150 per hour but not less than \$200 per occurrence. Inspections made under this paragraph and paragraph (a)(1) above may include, but are not limited to, field erection inspections, planning or advisory inspections requested by a beneficiary, and other special inspections or reviews.
 - (c) Other required fees. Reserved.
 - (d) Amusement rides, certificate of inspection fees.
 - (1) For a first time inspection and for inspections described in paragraph (3) below, the department shall charge a fee of \$75 per hour during regular working hours and \$150 per hour at other times. No inspection shall be considered as less than one hour and each fraction of one quarter hour or greater shall be counted as a full hour.
 - (2) Inspections, for which a fee is to be charged, shall include, but are not limited to:
 - (A) A reinspection of a ride at a site to allow it to operate at that site after the ride was found at an earlier inspection to be unsafe;
 - (B) An inspection made at a site after being unable to complete an earlier inspection at that site due to delay within the control of the beneficiary;
 - (C) A certificate inspection; and
 - (D) Scheduled inspections delayed or canceled by the beneficiary too late to prevent the arrival of the inspector on the premises.
 - (3) When an unscheduled inspection is made at the request of and for the benefit of the owner or user, the sum of expenses incurred shall be charged in addition to the inspection fee.

- (4) Whenever the beneficiary fails to pay the fees required under this section within sixty days after notification, the beneficiary shall pay, in addition to the fees required, a penalty equal to fifty per cent of the fee. For the purpose of this section, the date of invoice shall be considered the date of notification.
[Eff 7/6/98] (Auth: HRS §397-4) (Imp: HRS §397-5)

§12-241-8 Rights and enforcement. (a) Rights.

- (1) Authorized representatives of the director may enter without delay during regular working hours and at other reasonable times, any place, establishment, or premises in which are located amusement rides, and elevators and kindred equipment requiring inspection pursuant to chapter 397, HRS.
- (2) The department may question any employer, owner, operator, agent, or employee in investigation, enforcement, and inspection activities covered by this chapter.
- (3) Any employee of the State acting within the scope of the employee's office, employment, or authority under chapter 397, HRS, shall not be liable for or made a party to any civil action growing out of administration and enforcement of chapter 397, HRS.

(b) Enforcement.

- (1) Whenever right of entry to a place to inspect amusement ride, or elevator and kindred equipment required by this chapter to be inspected is refused to an authorized representative of the director, the department may apply to the circuit court where the place exists for a search warrant providing on its face that the wilful interference with its lawful execution may be punished as a contempt of court.
- (2) Whenever the department finds that the construction of or the operation of any amusement ride, or elevator and kindred equipment required to be inspected by this chapter is not safe, or that any practice, means, method, operation, or process employed or used is unsafe or is not in conformance with the standards and codes adopted pursuant to chapter 91, HRS, the department shall issue an order to render the construction or operation safe or in conformance with chapter 397, HRS, or standards and codes and deliver the same to the contractor, owner, or user. Each order shall be in writing and may be delivered by mail or in person. The department may in the order direct that, in the manner and within a time specified, such additions, repairs, improvements, or changes be made and such safety devices and safeguards be furnished, provided, and used as are reasonably required to ensure compliance with the purposes and provisions of chapter 397, HRS. The owner, user, or contractor shall obey and observe all orders issued by the department or be subject to appropriate civil penalties.
- (3) Whenever, in the opinion of the department, the condition of or the operation of amusement rides, or elevators and kindred equipment required to be inspected by chapter 397, HRS, or any practice, means, method, operation, or process employed or used, is unsafe, or is not properly guarded, or is dangerously placed,

its use may be prohibited by the department. An order to that effect shall be posted prominently on the equipment or near the place or condition referred to in the order. The order shall be removed when a determination has been made by an authorized representative of the department that the amusement rides, or elevators and kindred equipment are safe and the required safeguards or safety devices are provided.

- (4) Pursuant to section 397-4(d)(4), HRS, the department may apply for a restraining order from a circuit court to effect enforcement.
- (5) Pursuant to section 397-4(d)(5), HRS, the director, or an authorized representative, shall have the same powers possessed by the court respecting administering of oaths, compelling attendance of witnesses, producing documentary evidence, and examining witnesses or causing them to be examined, and may take depositions and certify to official acts.
- (6) Where a condition or practice involving any amusement ride, or elevator and kindred equipment required to be inspected by chapter 397, HRS, could reasonably be expected to cause death or serious physical harm, the department shall have the right, independent of any other enforcement powers under this chapter, to:

- (A) Immediately take steps to obtain abatement by informing the owners, users, contractors, and all persons in harms way of the hazard by meeting, posted notice, or otherwise;
 - (B) Take steps to immediately obtain abatement through direct control or elimination of the hazard if, after reasonable search, the user, owner, contractor, or their representative is not available;
 - (C) Take steps to obtain immediate abatement when the nature and imminency of the danger or hazard does not permit a search for the owner, user, or contractor; and
 - (D) Where appropriate, initiate necessary legal proceedings to require abatement by the owner, user, or contractor.
- (7) The department may prosecute, defend, and maintain actions in the name of the department for the enforcement of the provisions of chapter 397, HRS, including the enforcement of any order issued by it, the appeal of an administrative or court decision, and other actions necessary to enforce chapter 397, HRS. [Eff 7/6/98] (Auth: HRS §397-4) (Imp: HRS §§397-4, 397-6, 397-8)

§12-241-9 Violations and penalties. (a) The director may assess all civil penalties provided in this section, giving due respect to the gravity of the violation, the good faith of the owner, user, consultant, contractor, or vendor, and the history of previous violations.

(b) Violations.

- (1) Any owner, user, consultant, contractor, or vendor who violates chapter 397, HRS, or any safety standards and codes adopted pursuant to chapter 91, HRS, or who violates or fails to comply with any order made under or by virtue of chapter 397, HRS, or who defaces, displaces, destroys, damages, or removes without the authority of the department any safety device, safeguard, notice, order, or warning required by chapter 397, HRS, standards, or codes, shall be assessed a civil penalty of not more than \$1,000 for each such violation.
- (2) Each day a violation continues shall constitute a separate violation except during an abatement period.

(c) Discrepancies and penalties.

- (1) Any conditions found not in conformance with applicable standards or codes, adopted pursuant to chapter 91, HRS, shall be regarded as discrepancies and shall be made known to the owner, user, consultant, contractor, or vendor by letter or written "order to correct" or both. All discrepancies shall be satisfactorily resolved as soon as possible. When, in the opinion of the department, a discrepancy constitutes a potentially serious or imminent hazard, it may prohibit the use of the equipment until the condition is abated. Failure to abate unsafe conditions or failure to correct discrepancies within the time prescribed shall be a violation subject to the civil penalties prescribed in this section.
- (2) Assessing penalties.
 - (A) Consideration shall be given to the gravity of the violation. For a violation that could not or probably would not result in serious harm to life or property, the penalty

may be reduced by forty per cent.

- (B) Consideration shall be given to the good faith of the owner, user, consultant, contractor, or vendor. For immediate correction or for attempts to make corrections or abate hazards that have been thwarted by conditions beyond the control of the owner, user, consultant, contractor, or vendor, the penalty may be reduced by forty per cent.
- (C) Consideration shall be given for the history of previous violations. For few or no previous violations by the owner, user, consultant, contractor, or vendor, the penalty may be reduced by twenty per cent.

(d) Anyone who knowingly making a false statement on any document required by chapter 397, HRS, shall, upon conviction, be punished by fine or imprisonment or both. Any evidence suggesting that a false statement may have been made shall be immediately referred to the director, who shall consult with the attorney general for purposes of initiating appropriate action.
[Eff 7/6/98] (Auth: HRS §397-4) (Imp: HRS §397-8)

§12-241-10 Review and appeal. (a) Any order of the director shall be final and conclusive against the owner, user, vendor, consultant, or contractor unless a written notice of contest of the order is filed with the director specifying what is being contested within twenty days after receipt of such order.

(b) The owner, user, vendor, consultant, or contractor may petition the director for modification of the abatement requirements in an order, provided the petition is filed no later than the close of the next business day following the date on which abatement is required. Under exceptional circumstances and for good cause shown, the petition may be filed at a later date. The director shall issue an order either affirming or modifying the abatement requirement.

(c) The director shall advise the appeals board upon receipt of notice of contest.

(d) The appeals board shall afford an opportunity for hearing on any notice of contest in accordance with adopted rules of practice and procedure.
[Eff 7/6/98] (Auth: HRS §397-4) (Imp: HRS §397-9)

§12-241-11 Judicial review. Judicial review of a decision and order of the appeals board may be obtained in the manner provided in chapter 91, HRS, by instituting proceedings in the circuit court of the circuit in which the contested issues reside. [Eff 7/6/98] (Auth: HRS §397-4) (Imp: HRS §§397-10, 397-91-14)

§12-241-12 Trade secrets. Information obtained by the department containing or revealing a trade secret shall be held confidential and access shall be limited to authorized representatives of the director concerned with carrying out chapter 397, HRS, or when relevant, in any proceedings under chapter 397, HRS. [Eff 7/6/98] (Auth: HRS §397-4) (Imp: HRS §397-11)

§12-241-13 Evidence. No record or determination of any administrative proceedings under chapter 397, HRS, or any statement or report of any kind obtained or received in connection with the administration or enforcement of chapter 397, HRS, shall be admitted or used, whether as evidence or a

discovery, in any civil action growing out of any matter mentioned in the record, determination, statement, or report other than an action for enforcement or review under chapter 397, HRS. [Eff 7/6/98] (Auth: HRS §397-4) (Imp: HRS §397-12)

§12-241-14 Reporting of accidents. (a) Whenever an accident occurs to either an amusement ride, or an elevator and kindred equipment, the owner, user, or maintenance company shall promptly notify the division by submitting a detailed accident report. For reporting purposes, accident is defined as an occurrence resulting in damage to an elevator and kindred equipment and amusement device rendering it inoperative or any occurrence resulting in physical injury requiring treatment by a physician.

(b) Whenever an accident occurs which results in loss of life or inpatient hospitalization, the owner, user, or maintenance company shall promptly notify the division by telephone or messenger within forty-eight hours, and neither the amusement ride, or elevator and kindred equipment, or any of their parts, shall be removed or disturbed before permission has been given by the department except for the purpose of saving human life and limiting consequential damage.

(c) Additional reports, in writing or otherwise, may be required by the director. [Eff 7/6/98] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-241-15 Suspending operation. (a) If, upon inspection, an elevator, escalator and kindred equipment is found to be unsafe to operate, the inspector shall notify the department and the permit to operate may be suspended by the department.

(b) Any person, firm, partnership, or corporation causing any unsafe elevator, escalator and kindred equipment to continue to be operated shall be subject to the penalty provided in the law. [Eff 7/6/98] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-241-16 Notification of transfer and location. (a) The contractor, erector, seller, vendor, or any person responsible for the transfer of ownership shall notify the department in writing within 30 calendar days giving the address, name, and phone number of the purchaser for any elevator and kindred equipment except those exempted by section 12-241-4(a) sold in this jurisdiction.

(b) The owner or lessee of any elevator, dumbwaiter, escalator, or moving walk who sells, gives, or removes the device shall report the transaction and the name and address of the new owner or user within ten calendar days of the transaction to the department. [Eff 7/6/98] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-241-17 Records. Records shall be maintained by the boiler and elevator inspection branch for the purpose of preserving reports of inspections, witnessing of test and accident investigations, correspondence, prints, and memoranda for all objects inspected pursuant to these rules. These reports of inspections, witnessing of test and accident investigations, correspondence, prints, and memoranda shall be maintained for a period of not less than five years for elevators and kindred equipment. [Eff 7/6/98] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-241-18 Variances. In cases of practical difficulties, undue hardships, or new developments, an owner, user, contractor, or vendor may apply for a variance from any elevator safety standard. The application must be in writing, clearly stating the standard from which a variance is sought, the conditions, means, practices, methods, operations, or processes proposed to be used, together with drawings, specifications, and other supporting data. The director may issue an order for a variance if what is proposed will provide a substantially equivalent level of safety to that provided by the standard. [Eff 7/6/98] (Auth: HRS §397-4) (Imp: HRS §397-4)

TABLE 241-1

ELEVATOR AND KINDRED EQUIPMENT INSTALLATION FEES

September 1, 1998

Dumbwaiter	\$265
Escalator, electric stairway, or moving walk	375
Incline stairway lift	190
Incline wheelchair lift	190
Manlift	225
Vertical wheelchair lifts	190
Elevator	
8-floor rise or under	300
9-floor rise but not over 18 floors	340
19-floor rise but not over 28 floors	375
29-floor rise but not over 38 floors	415
39-floor rise and over	450
Temporary use of permanent elevators	150
Aerial tramways	355
Personnel hoists	200
Inclined lifts	300
Alteration Permit	150

TABLE 241-2
ELEVATORS AND KINDRED EQUIPMENT INSPECTION FEES
September 1, 1998

Dumbwaiters	\$ 90
Escalator, moving walk, or moving ramp	105
Hand elevator, manlift, or stage lift	100
Inclined stairway lift	100
Inclined wheelchair lift	100
Vertical wheelchair lift	100
 <u>Power elevators</u>	
Hydraulic elevator	105
8-floor rise or under	155
9-floor rise but not over 18 floors	175
19-floor rise but not over 28 floors	200
29-floor rise but not over 38 floors	230
39-floor rise and over	255
 Aerial tramways	300
Personnel hoists	120
Inclined lifts	160
3 Year Safety Test	160
5 Year Safety Test	195
Report and permit processing	20

[Eff 7/6/98; am 5/24/99] (Auth: HRS §397-4) (Imp: HRS §397-4)